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No. 187

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. LATTA).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,

December 7, 2011.

I hereby appoint the Honorable ROBERT E. LATTA to act as Speaker pro tempore on this day.

JOHN A. BOEHNER,
Speaker of the House of Representatives.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 5, 2011, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with each party limited to 1 hour and each Member other than the majority and minority leaders and the minority whip limited to 5 minutes each, but in no event shall debate continue beyond 11:50 a.m.

FLAWED DRAFT ENVIRONMENTAL ASSESSMENT IN PUERTO RICO

The SPEAKER pro tempore. The Chair recognizes the gentleman from Illinois (Mr. GUTIERREZ) for 5 minutes.

Mr. GUTIERREZ. Today I'm sending a letter to Colonel Alfred A. Pantano, the commander of the U.S. Army Corps of Engineers in Jacksonville, Florida, the district that oversees, among other things, the permitting process for the construction of a massive gas pipeline that will cross the mountains in Puerto Rico. The 92-mile gas pipeline, which does not make any sense environmentally, economically, or ethically, is

moving forward in part because Colonel Pantano's office issued a Draft Environmental Assessment that clearly favors the eventual issuance of the permit.

I would like to read an excerpt from my letter:

"I was intensely angered, but sadly not entirely surprised, when I read the report issued by your office regarding the gasoducto in Puerto Rico. From the start, people in Puerto Rico have been telling me that they suspect all the regulatory oversight is nothing more than show and this process has been assured of passage because of insider cozy relationships between the Army Corps Jacksonville staff and the very industry they are supposed to be overseeing and regulating.

"Further, having sunk millions of dollars in this project already, the ruling party in Puerto Rico's very credibility is at stake on this massive construction project going forward.

"The Draft Environmental Assessment is so slanted and flawed that it adds more evidence to the growing view that there will be no meaningful oversight for this project and no meaningful input from the residents of Puerto Rico.

"I believe your decision, Colonel Pantano, shows a complete disregard for compelling evidence demonstrating little need for the project. It shows disregard for the opinion of other Federal agencies who have looked at the project. The decision disregards evidence of potential safety hazards to the people of Puerto Rico. This woefully slanted decision also gives credence to the suggestion of impropriety in matters related to this project and the inability of the U.S. Army Corps of Engineers to oversee this project.

"I believe this process should begin again in an open and transparent manner, that the process that has led to the decision should be fully investigated, and further efforts should be

supervised by new leadership. I ask for a U.S. Army Office of Inspector General investigation immediately into the relationship between the government of Puerto Rico, the Army Corps of Engineers Jacksonville office, and the power companies and its contractors.

"Lobbyists who used to work for the Army Corps of Engineers should not be allowed to line their pockets at the expense of the safety of the people of Puerto Rico. Your boss, President Obama, stated 'the cozy relationship between the regulators and the industry they regulate must come to an end.'

"I strongly support the President and agree with him completely. However, my misgivings about the pipeline project multiplied substantially when the project was abruptly removed from Army Corps' office in Puerto Rico and transferred to the Jacksonville office in Florida.

"There is clearly a cozy relationship between current Jacksonville staff that you supervise and former Jacksonville staff who now supervise and work for the private company consulted by and hired by the government of Puerto Rico to lobby and provide technical assistance for the project."

The result: The Army Corps of Engineers appears to have adopted all the power company's wholesale argument for moving forward. What a surprise. These include ignoring the advice of other Federal agencies that do not seem to have any cozy connections and relationships to the moneyed interests behind the pipeline, including warnings from the Fish and Wildlife Service—ignored; the Environmental Protection Agency—ignored.

Finally, I point out that it is an insult to the people of Puerto Rico to have released the Army Corps' report in the manner it was released. The report is exclusively in English, whereas the common language in Puerto Rico is

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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Spanish. English is a language that hundreds of thousands of Puerto Ricans whose lives will be directly affected by the pipeline do not speak and cannot read. How are they supposed to give advice and consent?

It is also personally insulting that the 30-day comment period occurred during the holiday season when the residents of Puerto Rico are especially focused on their family, and interestingly enough, Congress will be in recess.

The people of Puerto Rico, including those who live humbly in the mountains and those who have derived their livelihoods from the land, deserve a government that protects their interest. They deserve to know when their safety and way of life are threatened, the government will protect them. This case reveals the opposite. It reveals a government agency that ignores the warnings of other government agencies and a wealth of facts regarding safety concerns and environmental impact. It reveals a government agency that responds more to well-connected lobbyists than advocates for the people of Puerto Rico. It reveals a government agency that is doing nothing—not doing the job that it was mandated to do.

Mr. Speaker, I would like to include in the RECORD this petition, on behalf of many individuals and environmental groups from the Legal Assistance Clinic at the Law School at the University of Puerto Rico, to have the environmental assessment translated into Spanish.

ESCUELA DE DERECHO,
UNIVERSIDAD DE PUERTO RICO,
San Juan, PR, December 6, 2011.

Re Petition to Translate into Spanish the Draft Environmental Assessment, Statement of Findings, Public Notice, and Joint Permit Application for the Via Verde Natural Gas Pipeline Project, Permit Application No. SAJ 2010-02881 (IP-EWG).

Colonel ALFRED A. PANTANO,
District Commander, U.S. Army Corps of Engineers, Jacksonville District, San Marco Boulevard, Jacksonville, FL.

DEAR COLONEL PANTANO: The United States Army Corps of Engineers (USACE) has recently published a Draft Environmental Assessment and Statement of Findings (collectively, Draft EA) as part of its environmental review process under the National Environmental Policy Act (NEPA) for the Via Verde Natural Gas Pipeline project proposed by applicant Puerto Rico Electric Power Authority (PREPA) under permit application SAJ-2010-2881 (IP-EWG). This project involves the construction of a 92-mile natural gas pipeline that would cross the island of Puerto Rico, starting at the municipality of Peñuelas in the south coast, to Arecibo in north coast and then east to San Juan. According to the Draft EA, the purpose of the pipeline is to supply natural gas to three power plants located in the north coast. The project will have temporary and permanent impacts on 235 river and stream crossings; 1,500 acres of land; 369 acres of wetlands (including various types of important aquatic resources); the biodiversity-rich and underground water-abundant northern karst zone; private and public forested lands; natural reserves; archaeological sites; areas

of critical habitat for endangered and/or threatened species; rural areas; densely populated urban areas; and coastal areas. In all, the project may affect over 40 endangered or threatened species, and will put at permanent risk the lives of over 200,000 residents. The majority of the people of Puerto Rico are against this project, as shown by various polls, the 6,000 comment letters your agency has received so far, and the public demonstrations against the project involving tens of thousands of Puerto Rican citizens. In addition, this project has been the subject of vivid presentations on the floor of Congress, as well as hundreds of news articles, including attention from the New York Times, Washington Post, and other national media. Not surprisingly, your agency has acknowledged that this project is one of very high public interest.

We are submitting this letter on behalf of various environmental groups and individuals. The conservation groups include the Puerto Rico Chapter of The Sierra Club; Center for Biological Diversity; Ciudadanos del Karso; Asociación Nacional de Derecho Ambiental; Comité Bo. Portugués Contra el Gasoducto; Comité Utuadeño en Contra del Gasoducto; Sociedad Ornitológica Puertorriqueña; Vegabajeños Impulsando Desarrollo Ambiental Sustentable; Iniciativa para un Desarrollo Sustentable; and Comité Toabajeño en Contra del Gasoducto. These groups all share a common purpose: to promote the general welfare of the communities they serve through education and capacity building of its residents concerning the adverse impacts of human activities on the ecologic balance of natural systems and the importance of restoring the environment and promoting conditions under which human beings and the environment can exist in harmony to fulfill economic, social and other needs of present and future generations.

Likewise, the individual clients of the environmental law clinics of Vermont Law School, University of Puerto Rico School of Law, and the Inter American University School of Law; and of the Puerto Rico Legal Services, Inc. support this petition as well. These individuals include Juan Cortés Lugo; Sofía Colón Matos; Luis Guzmán Meléndez; Ana Oquendo Andújar; Iván Vélez González; Francisca M. Montero Colón; Sol Maria De Los Angeles Rodríguez Torres; Iván Carlos Belez Montero; Aristides Rodríguez Rivera; Ada I. Rodríguez Rodríguez; Alex Noel Natal Santiago; Miriam Negrón Pérez; Francisco Ruiz Nieves; Silvy Jordán Molero; Ana Serrano Maldonado; Félix Rivera González; William Morales Martínez; Trinita Alfonso Vda. De Folch; Alejandro Saldaña Rivera; Dixie Vélez Vélez; Dylia Santiago Collaso; Ernesto Forestier Torres; Miriam Morales González; Fernando Vélez Vélez; Emma González Rodríguez; Samuel Sánchez Santiago; Raquel Ortiz González; Maritza Rivera Cruz; Virginio Heredia Bonilla; Lilian Serrano Maldonado; Yamil A. Heredia Serrano; Jean Paul Heredia Romero; Pablo Montalvo Bello; Ramona Ramos Díaz; Virgilio Cruz Cruz; Cándida Cruz Cruz; Amparo Cruz Cruz; Gilberto Padua Rullán; Sabrina Padua Torres; Maribel Torres Carrión; Hernán Padín Jiménez; Rosa Serrano González; Jesús García Oyola; Sucesión de Ada Torres, compuesta por Carmen Juarbe Pérez, Margarita Forestier Torres y Ernesto Forestier Torres; María Cruz Rivera; Cristóbal Orama Barreiro; Haydee Irizarry Medina; Miguel Baéz Soto; and Gustavo Alfredo Casaldud Torres.

We anticipate that more groups and individual citizens will join this petition in the coming days or weeks.

The purpose of this letter is to formally request that the USACE prepare a Spanish version of Draft EA and other key docu-

ments, particularly the most recent Public Notice and Joint Permit Application. In order for the public comment period to provide a meaningful opportunity for public input on a project of tremendous local interest and concern, it is important that these translations are prepared and distributed to the public before the commencement of the public comment period. Once the USACE provides an official Spanish version of the Draft EA and other key documents, the USACE should provide a public comment period of at least 60 days in light of the complexity and magnitude of this proposed project. In addition, we respectfully request that the USACE provide public hearings in Puerto Rico with translators available.

There are ample statutory and regulatory provisions as well as executive orders and judicial precedents which support our requests, as discussed further below. Furthermore, compliance with these requests is necessary if USACE intends to provide affected communities and interested individuals throughout the island of Puerto Rico with an adequate opportunity to comment on the project, considering that less than 19% of island residents consider themselves to be bilingual. The residents of these communities often have valuable information about places and resources that they value and the potential environmental, social, and economic effects that the proposed federal actions may have on those places and resources. NEPA and other federal statutes, regulations, and executive orders require USACE to provide concerned citizens and organizations with access to enough information to allow them to provide meaningful comments, and these laws require USACE to take their comments into account. If the key documents to be evaluated remain available only in a foreign language, however, it will be too difficult for the affected and concerned citizens and groups alike to meaningfully and adequately comment on the project. In fact, the Draft EA and other key documents include so much technical and difficult to grasp information that even an English-speaking layperson would have difficulty reading, analyzing, and commenting in just 30 days.

Fundamental principles of environmental justice warrant that the Draft EA for a project of such magnitude must be translated in the Spanish language and that the public comment period be restarted and extended to 60 days once the Spanish version of the EA is available to the public. The USACE is bound to these principles by NEPA, the Council on Environmental Quality Guidelines (CEQ guidelines), the Executive Order on Federal Actions to Address Environmental Justice, the Department of Defense Strategy on Environmental Justice pursuant to the Executive Order, the U.S. Constitution, and other legal authorities and precedents.

Security issues also warrant a translation. The pipeline is a safety risk to various thousands of people who will live, work or commute daily near the pipeline's ROW. The Draft EA recognizes this fact when it states that "the addition of the pipeline in the community decreases public safety." Likewise the value of property might be affected depending on the proximity to the ROW of the pipeline. Basic fundamental principles of justice require that people put in harm's way or whose property, may be affected be able to read and understand the Draft EA which contains the basic findings of the USACE regarding the risks of the proposed action to their lives and property.

NEPA AND CEQ REGULATIONS

The Draft EA for the proposed Via Verde Pipeline project was prepared by the USACE pursuant to an environmental review process

required under NEPA. NEPA's environmental review process has two major purposes: (1) for agencies to make better informed decisions; and (2) for other interested agencies and citizens alike to have an opportunity to participate and provide input in the review process. Courts have repeatedly interpreted the statute as requiring agencies to grant meaningful and adequate participation to the public by disclosing all non-exempted documentation the agency used and by allowing the public to submit comments in a process that guarantees that the agency will take into account the public's comments.

In light of these obligations, USACE has repeatedly promised that it will take into account all the comments submitted by the people of Puerto Rico. A 30-day period is not enough time to give the people of Puerto Rico a meaningful opportunity to read, analyze, evaluate and then comment on this 110-page long Draft EA for this highly complex and controversial project. Moreover, the USACE has overlooked the fundamental fact that Puerto Rico is a Spanish-speaking nation and the Draft EA, a highly technical document, and other key documents are written in the English language. If affected and concerned citizens are not able to read the key documents under review, their participation will not be meaningful and adequate as the statute requires.

Through NEPA, Congress ordered the Council on Environmental Quality (CEQ) to issue regulations governing federal agency implementation of the NEPA environmental review process. These CEQ regulations are binding on all federal agencies. Section 1506.6 of the CEQ regulations, regarding public involvement, states that agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

1. . . .

2. . . .

3. In the case of an action with effects primarily of local concern the notice may include:

(i) . . .

(ii) . . .

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) . . .

(c) . . .

(d) Solicit appropriate information from the public.

(e) . . .

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public . . . [emphasis added]

When a Federal provision requires "diligent efforts to involve the public", to "inform those persons [. . .] who may be interested or affected", and to "solicit appropriate information from the public" in a Spanish-speaking nation like Puerto Rico, regarding a project so controversial and of such a scope and magnitude as Va Verde, the only way to comply with the provision is by providing the information in the common language spoken. Likewise, in the case of an action with effects primarily of local concern, as in the case of Va Verde, section 1506.6 (b)(3)(iii) orders the agency to follow "the affected State's public notice procedures for comparable actions" which for Puerto Rico would be a draft EA in the Spanish language.

CEQ regulations offer additional reinforcement in order to guarantee an adequate public participation. For instance, section 1502.8

of the CEQ guidelines state that "[e]nvironmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them" [emphasis added]. Courts have interpreted this "plain language" provision as to require Federal agencies to provide the public with comprehensive information regarding environmental consequences of a proposed action and to do so in a readily understandable manner. See *Klamath-Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989 (2004), "While the conclusions of agency expert are entitled to deference, National Environmental Policy Act (NEPA) documents are inadequate if they contain only narratives of expert opinions, and the documents are unacceptable if they are indecipherable to the public"; *Earth Island Institute v. U.S. Forest Service*, C.A.9 (Cal.), 442 F.3d 1147 (2006), *certiorari denied* 127 S.Ct. 1829, 549 U.S. 1278, 167 L.Ed.2d 318 (emphasis added), "A final environmental impact statement (FEIS) must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the FEIS" [emphasis added]; *Oregon Environmental Council v. Kunzman* 817 F.2d 484 (1987), "Readability requirement of Council on Environmental Quality regulation mandates that environmental impact statement be organized and written so as to be readily understandable by governmental decision makers and by interested nonprofessional laypersons likely to be affected by actions taken under the environmental impact statement" [. . .] "Upon review of environmental impact statement, parties may introduce evidence concerning reading level of affected public and expert testimony concerning indicia of inherent readability. National Environmental Policy Act of 1969, §102, 42 U.S.C.A. §4332; 5 U.S.C.A. §706(2)(A, D)" [emphasis added]. See also *National Resources Defense Council, Inc. v. United States Nuclear Regulatory Comm'n*, 685 F.2d 459, 487 n. 149 (D.C.Cir.1982); *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87 (1983); and *Warm Springs Dam Task Force v. Gribble*, 78 F.Supp. 240, 252 (N.D.Cal.1974), *aff.*, 621 F.2d 1017 (9th Cir.1980). These requirements for EISs apply equally to EAs, as indicated in the CEQ regulations' use of the term "environmental documents" rather than EISs alone.

In the case of Puerto Rico, a Draft EA that is highly technical and written in the English language is "undecipherable" and not "readily understandable" in order be properly assessed and commented by lay persons whom in their wide majority are not fluent in the English language.

ATTORNEY GENERAL ERIC HOLDER MUST RESIGN

The SPEAKER pro tempore. The Chair recognizes the gentleman from Louisiana (Mr. BOUSTANY) for 5 minutes.

Mr. BOUSTANY. Mr. Speaker, U.S. Attorney General Eric Holder must resign immediately. After months of evading tough questions and giving unclear answers about Operation Fast and Furious, it now appears the Justice Department's top official has contradicted his own testimony given before Congress.

Under Operation Fast and Furious, the Bureau of Tobacco, Alcohol, and Firearms allowed "straw" purchasers to buy at least 1,400 weapons, despite the fact it knew that these weapons

would likely end up in the hands of violent Mexican drug cartels. The ATF lost track of the guns after they were sold to criminals. Since then, many have been used in hundreds of crimes on both sides of the border, including the murders of a Border Patrol agent in Arizona and an immigration officer at the U.S. embassy in Mexico City.

Why did the Attorney General allow for the transfer of guns across the border without working in conjunction with Mexican authorities when he knew the ATF was unable to trace them? That's a very important question that must be answered. This botched program should never have been authorized in the first place. Attorney General Holder should resign over his failure and his evasive and contradictory testimony to the United States Congress.

THE REINS ACT AND MINE SAFETY

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. GEORGE MILLER) for 5 minutes.

Mr. GEORGE MILLER of California. Mr. Speaker, Members of the House, later today, the House will consider the REINS Act, which is legislation designed to make sure that in a Republican-controlled Congress, no new regulations would be put into effect, whether they deal with clean drinking water, clean air, child safety, the safety of children when they play with their toys, the drugs that so many citizens need to take to maintain their health, or occupational safety at the workplace. All of that would be destroyed under the REINS Act.

You might ask yourself what would society look like? Well, we had a preview of what that society looks like yesterday when the Mine Safety and Health Administration released its report on the Upper Big Branch mine. What that society looked like to these miners and to their families was 29 dead coal miners, because the Massey Corporation was basically allowed by its board of directors to evade the basic regulations that were in place to protect the miners.

Although the miners don't have whistleblower protections, we saw that Massey was able to intimidate the workers every day not to report safety violations, not to write up safety violations, not to report things that needed to be repaired, because the chairman of the board told them the priority was the production of coal, not the safety of the workers.

□ 1010

Produce the coal or get out is what he told them. So they were not able to participate in their own safety when they saw a violation or they saw a problem that caused danger in the mine.

They also were able to circumvent the right of the mine safety inspections